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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/400,034	09/21/1999	RALPH K. ITO	OLYMPUS-13	2992

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EXAMINER

SAVAGE, MATTHEW O

ART UNIT

PAPER NUMBER

1723

DATE MAILED: 03/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/400,034

Applicant(s)

ITO, RALPH K.

Examiner

Matthew O Savage

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1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) 11-13 and 28-52 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-10 is/are allowed.
- 6) ☒ Claim(s) 14-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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Applicant's election with traverse of species 1 and groups I, III, and IV in Paper No. 6 is acknowledged. The traversal is on the ground(s) that groups II and VI should be examined along with groups I, III, and IV since the examiner has not shown that the products (groups I, III, and IV) could be used to carry out materially different processes (groups II and VI). This is not found persuasive because the restriction requirement clearly points out that the products could be used to carry out a materially different process, for example, in a process for temporarily sealing a liquid dispenser wherein liquid is dispensed from the cup through the tip of the pipette and temporarily sealed with the constricted passage of the support after dispensing the liquid. In addition, the methods could be carried out by another and materially different apparatus, for example, an apparatus including a pipette having a sample cup with a closed upper end or a support with a channel having a length shorter than a length of the pipette tip.

The requirement is still deemed proper and is therefore made FINAL.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 17-20, and 22-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 17, it is unclear as to how the details of the part further limit the pipette structure recited in claim 14.

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Claims 18-20 are indefinite since they relate the pipette structure to details of un-claimed elements which are variable.

With respect to claim 22, it is unclear as to how the details of the part further limit the constricted passage recited in claim 21.

Claims 23-25 are indefinite since they relate the support to details of un-claimed elements which are variable.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Jeff et al.

With respect to claim 14, Jeff et al disclose a pipette tip (see FIG.5) having a tip open end 66, and a sample cup 22 coupled with the pipette tip and having an open end 26.

With respect to claims 15 and 16, Jeff et al disclose the pipette tip as being formed of a flexible and collapsible material (e.g., because it is formed of polypropylene and has a relatively thin wall thickness, see from line 67 of col. 4 to line 3 of col. 5, and lines 65-68 of col. 5).

Claims 17-20 relate to intended use and carry no patentable weight.

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Claims 21-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Hardwick.

With respect to claim 21, Hardwick discloses a support 12 including a channel 26 (see FIG. 5), a support 16, and a constricted passage 18.

Claims 22-25 relate to intended use and carry no patentable weight.

Regarding claim 26, Hardwick discloses a support shaped as a funnel (see the upper portion of the slot 16 in FIGS. 3-7).

As to claim 27, Hardwick discloses the support as being tapered (see the upper portion of the slot 16 in FIGS. 3-7).

Jeffs et al and Hardwick are considered the closest prior art, however, neither reference teaches or suggests the combination of a pipette having an open tip end and a sample cup coupled with the pipette tip and having an open upper end and a second part having a channel for receiving the pipette tip of the first part, a support for accommodating at least a portion of the sample cup, and constricted passage arranged between the channel and support for collapsing the pipette tip of the first part as the first part is inserted into the second part as recited in instant claim 1.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew O Savage whose telephone number is 703-308-3854. The examiner can normally be reached on Monday-Friday, 7:00am-3:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda W. Walker can be reached on 703-308-0457. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3602 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

M. Savage

Matthew O Savage
Primary Examiner
Art Unit 1723

mos

December 11, 2001